

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-296
Administrative Law Judge Division
_____, 2013

RESOLUTION

RESOLUTION ALJ-296. Appeal of Citation FC-547 - In the Matter of the Citation of Adventures Rolling Cross Country, Inc. d/b/a Adventures Cross Country. The Settlement Agreement is approved.

SUMMARY

We approve the settlement between Adventures Rolling Cross Country, Inc. and the Commission's Safety and Enforcement Division.

BACKGROUND

On December 17, 2012, the Safety and Enforcement Division (SED) cited Adventures Rolling Cross Country, Inc. d/b/a Adventures Cross Country (ACC) for 40 counts of five different categories of transportation violations¹ stemming from three separate trips in the summer of 2011. The original citation included a fine of \$2,000 in addition to \$501.50 in Public Utilities Commission Transportation Reimbursement Account (PUCTRA) fees. ACC filed a timely appeal of FC-547. On August 19, 2013, ACC and SED entered into the settlement agreement (Settlement Agreement) attached hereto as Attachment A.

¹ 29 counts of operating prior to issuance of authority in violation of Public Utilities Code Section 5371; four (4) counts of engaging drivers prior to enrollment in the DMV EPN program in violation of Pub. Util. Code §§ 5374(a)(1)(d) and 5381, General Order (GO) 157-D part 502, and Vehicle Code Section 1808.1; four (4) counts of failing to enroll drivers in the controlled substance and alcohol testing certification program in violation of Pub. Util. Code §§ 5374(a)(1)(I) and 5381, and GO 157-D part 10; two (2) counts of advertising without a valid permit in violation of Pub. Util. Code § 5414.4; and one (1) count of underreporting gross revenue and underpaying PUCTRA fees in violation of Pub. Util. Code § 5378(a)(9).

ACC took the three trips that were reviewed in this proceeding in the summer of 2011. The first trip was in June 2011 from San Diego to Yosemite to Mill Valley. The second and third trips (July trips) began and ended in San Francisco but travelled around California and across the state line into Nevada.

DISCUSSION

The Settlement Terms and Conditions

The settlement reduces the 40 violations of the original citation to four counts of four different categories of transportation violations.² The settlement reduces the fine to \$1,259 and the PUCTRA fees to \$97.25. The violations described in the Settlement Agreement stem only from the June 2011 trip to San Diego and Yosemite to Mill Valley. The Settlement Agreement resolves all outstanding issues in this proceeding.

The Settlement Agreement Meets the Commission's Criteria for Approval of Settlements

Pursuant to Rule 12.1(d), the Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the record as a whole, consistent with the law and in the public interest. The Settlement Agreement meets all these criteria.

A. The Settlement Agreement is Reasonable in Light of the Whole Record

The July trips were interstate in nature, a fact confirmed by SED, and hence not subject to Commission jurisdiction. At the time of the June trip, which was wholly intrastate and hence subject to Commission jurisdiction, ACC did not have a charter party carrier permit and had not enrolled its June driver in either the DMV pull notice program under Pub. Util. Code § 5374(a)(1)(D) or a drug and alcohol testing program under Pub. Util. Code § 5374(a)(1)(I). Removing the July trips from the citation was legally necessary; continuing to impose a reduced fine and fees for the violations committed in connection with the June trip was within Commission jurisdiction and appropriate.

B. The Settlement Agreement is Consistent with the Law

The parties are aware of no statutory provision or prior Commission decision that would be contravened or compromised by the settlement.

² One each of the categories described in Footnote 1 except that there are no counts of advertising without a valid permit.

The issues resolved in the settlement are within the scope of the proceeding. The parties have entered into the Settlement Agreement voluntarily and after review of the entire record. The Commission's adoption and approval of the Settlement Agreement will not be construed as an admission or concession by any party regarding any fact or matter of law in dispute in this proceeding, nor as any statement of precedent of policy of any kind for any purpose in any current or future proceedings. Finally, the Settlement Agreement is an integrated document so that if the Commission rejects any part of the proposed settlement, either party to the Settlement Agreement has the right to withdraw. The parties believe the Settlement Agreement is fully consistent with the law.

C. The Settlement Agreement is in the Public Interest

Compared to a complete evidentiary hearing on all issues, the settlement achieves a significant savings in time, resources and expense for both ACC and SED and for the Commission as well. The parties fully considered the facts and the law relevant to this case and reached reasonable compromise on the issues. An evidentiary hearing and briefing on all issues could have resulted in a different result but not necessarily a better one for the public at large.

COMMENTS

No public review or comment is required for this resolution pursuant to Rule 14.7.

FINDINGS

1. The settlement is reasonable in light of the record as a whole
2. The settlement is consistent with the law.
3. The settlement is in the public interest.
4. The settlement agreement should be approved.

THEREFORE, IT IS ORDERED that:

The Settlement Agreement between Adventures Rolling Cross Country, Inc. d/b/a Adventures Cross Country and the Commission's Safety and Enforcement Division is approved.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on _____, the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director

Attachment A

Settlement Agreement

Public Utilities Commission

STATE OF CALIFORNIA

**CITATION FOR VIOLATION
OF PUBLIC UTILITIES CODE****REVISED CITATION AND SETTLEMENT AGREEMENT**

To: Adventures Rolling Cross Country, Inc.
Dba Adventures Cross Country
242 Redwood Highway
Mill Valley, CA 94941

File: TCP 28838

Date: April 8, 2013

Citation #: FC - 547

VIOLATIONS

You are hereby cited with having violated section(s) of the Public Utilities Code (PUC) and Commission General Orders (G.O.) as described below. These violations occurred during the period March 1, 2011 through August 31, 2011.

- (1) Operated as a charter party carrier prior to issuance of its authority, in violation of PUC section 5371. [1 count]; and
- (2) Engaged driver prior to enrollment in the DMV EPN program, in violation of PUC section 5374(a)(1)(D) and 5381 and G.O. 157-D, part 5.02 and California Vehicle Code section 1808.1. [1 counts];
- (3) Failed to enroll driver in the controlled substance and alcohol testing certification program and conduct pre-employment testing, in violation of PUC section 5374(a)(1)(I) and 5381 G.O. 157-D, part 10. [1 counts];
- (4) Underreported gross revenue and underpaid PUCTRA fees in violation of PUC section 5378 (a)(9) [1 count].

STATEMENT OF FACTS

The above violations are documented in the attached investigator's summary report, which consists of carrier's records and substantiating documents obtained from other sources. The revised violations all result from the June 2011 trip from San Diego to Yosemite to Mill Valley. The violations related to the July 2011 trips are removed pursuant to settlement on the grounds that those trips crossed the state line into Nevada, and therefore they were interstate transportation trips.

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SETTLEMENT AGREEMENT

As per the agreement between Adventures Rolling Cross Country, Inc. and Safety Enforcement Division to settle all violations outlined in this agreement, Adventures Rolling Cross Country, Inc. is hereby required to submit payment within 30 days of signing this agreement.

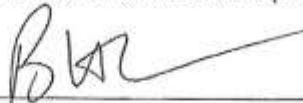
- (1) By way of answer you must pay a fine of \$ 1,250 pursuant to PUC section 5378. (Submit your check or money order payable to California Public Utilities Commission using the attached *Citation Payment Form*. Upon payment, the fine will be deposited in the State Treasury to the credit of the General Fund and the Commission staff will deem the matter closed.) Payment must be sent to California Public Utilities Commission, Fiscal Department, 505 Van Ness Avenue, San Francisco, CA 94102.

And

- (2) Pay \$97.25 in PUCTRA fees for 2011 in accordance to PUC Section 5378 (a) (9)

Adventures Rolling Cross Country, Inc. and Safety Enforcement Division hereby agree to this settlement agreement as well as the revised Citation of Violations dated April 8, 2012, and herewith pay the fine of \$ 1,250.

Date: 7/22/13


BRIAN KAHRS
Transportation Enforcement Branch
Safety Enforcement Division

Date:


SCOTT VON ESCHEN
CEO
Adventures Rolling Cross Country, Inc.

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